

117TH CONGRESS  
1ST SESSION

# S. 2352

To require health insurance coverage for the treatment of infertility.

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## IN THE SENATE OF THE UNITED STATES

JULY 15, 2021

Mr. BOOKER (for himself, Mr. MENENDEZ, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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# A BILL

To require health insurance coverage for the treatment of infertility.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Access to Infertility  
5 Treatment and Care Act”.

**6 SEC. 2. FINDINGS.**

7       Congress finds as follows:

8           (1) Infertility is a medical disease recognized by  
9           the World Health Organization, the American Soci-  
10          ety for Reproductive Medicine, and the American

1       Medical Association that affects men and women  
2       equally.

3           (2) According to the Centers for Disease Con-  
4       trol and Prevention, 1 in 8 couples have difficulty  
5       getting pregnant or sustaining a pregnancy.

6           (3) Infertility affects a broad spectrum of pro-  
7       spective parents. No matter what race, religion, sex-  
8       ual orientation, or economic status one is, infertility  
9       does not discriminate.

10          (4) According to the Centers for Disease Con-  
11       trol and Prevention, 11 percent of women in the  
12       United States between the ages of 15 and 44 have  
13       difficulty getting pregnant or staying pregnant.  
14       Similarly, 9 percent of men in the United States be-  
15       tween the ages of 15 and 44 experience infertility.

16          (5) Infertility disproportionately affects individ-  
17       uals with particular health complications. For cancer  
18       patients and others who must undergo treatments  
19       such as chemotherapy, radiation therapy, hormone  
20       therapy, or surgery that are likely to harm the re-  
21       productive system and organs, fertility preservation  
22       becomes necessary.

23          (6) Leading causes of infertility include chronic  
24       conditions and diseases of the endocrine or metabolic  
25       systems, such as primary ovarian insufficiency, poly-

1       cystic ovarian syndrome, endometriosis, thyroid dis-  
2       orders, menstrual cycle defects, autoimmune dis-  
3       orders, hormonal imbalances, testicular disorders,  
4       and urological health issues. Other causes include  
5       structural problems or blockages within the repro-  
6       ductive system, exposure to infectious diseases, occu-  
7       pational or environmental hazards, or genetic influ-  
8       ences.

9                 (7) Recent improvements in therapy and  
10          cryopreservation make pregnancy possible for more  
11          people than in past years.

12                 (8) Like all other diseases, infertility and its  
13          treatments should be covered by health insurance.

14                 (9) A 2017 national survey of employer-spon-  
15          sored health plans found that 44 percent of employ-  
16          ers with at least 500 employees did not cover infer-  
17          tility services, and 25 percent of companies with  
18          20,000 or more employees did not cover infertility  
19          services.

20                 (10) Coverage for infertility services under  
21          State Medicaid programs is limited. The Medicaid  
22          programs of only 5 States provide diagnostic testing  
23          for women and men in all of their program eligibility  
24          pathways; the Medicaid program of only one State  
25          provides coverage for certain medications for women

1 experiencing infertility; and no State Medicaid pro-  
2 grams cover intrauterine insemination or in vitro  
3 fertilization.

4 (11) States that do not require private insur-  
5 ance coverage of assisted reproductive technology  
6 have higher rates of multiple births.

7 (12) The ability to have a family should not be  
8 denied to anyone on account of a lack of insurance  
9 coverage for medically necessary treatment.

10 **SEC. 3. STANDARDS RELATING TO BENEFITS FOR TREAT-**  
11 **MENT OF INFERTILITY AND PREVENTION OF**  
12 **IATROGENIC INFERTILITY.**

13 (a) IN GENERAL.—Part A of title XXVII of the Pub-  
14 lic Health Service Act (42 U.S.C. 300gg et seq.) is amend-  
15 ed by inserting after section 2729 the following:

16 **“SEC. 2729A. STANDARDS RELATING TO BENEFITS FOR**  
17 **TREATMENT OF INFERTILITY AND PREVEN-**  
18 **TION OF IATROGENIC INFERTILITY.**

19 “(a) IN GENERAL.—A group health plan or a health  
20 insurance issuer offering group or individual health insur-  
21 ance coverage shall ensure that such plan or coverage pro-  
22 vides coverage for—

23 “(1) the treatment of infertility, including non-  
24 experimental assisted reproductive technology proce-

1       dures, if such plan or coverage provides coverage for  
2       obstetrical services; and

3           “(2) standard fertility preservation services  
4       when a medically necessary treatment may directly  
5       or indirectly cause iatrogenic infertility.

6       “(b) DEFINITIONS.—In this section:

7           “(1) the term ‘assisted reproductive technology’  
8       means treatments or procedures that involve the  
9       handling of human egg, sperm, and embryo outside  
10      of the body with the intent of facilitating a preg-  
11      nancy, including in vitro fertilization, egg, embryo,  
12      or sperm cryopreservation, egg or embryo donation,  
13      and gestational surrogacy;

14           “(2) the term ‘infertility’ means a disease, char-  
15      acterized by the failure to establish a clinical preg-  
16      nancy—

17           “(A) after 12 months of regular, unpro-  
18      tected sexual intercourse; or

19           “(B) due to a person’s incapacity for re-  
20      production either as an individual or with his or  
21      her partner, which may be determined after a  
22      period of less than 12 months of regular, un-  
23      protected sexual intercourse, or based on med-  
24      ical, sexual and reproductive history, age, phys-  
25      ical findings, or diagnostic testing; and

1           “(3) the term ‘iatrogenic infertility’ means an  
2 impairment of fertility due to surgery, radiation,  
3 chemotherapy, or other medical treatment.

4       **“(c) REQUIRED COVERAGE.—**

5           “(1) COVERAGE FOR INFERTILITY.—Subject to  
6 paragraph (3), a group health plan and a health in-  
7 surance issuer offering group or individual health in-  
8 surance coverage that includes coverage for obstet-  
9 rical services shall provide coverage for treatment of  
10 infertility determined appropriate by the treating  
11 physician, including, as appropriate, ovulation induc-  
12 tion, egg retrieval, sperm retrieval, artificial insemini-  
13 nation, in vitro fertilization, genetic screening,  
14 intracytoplasmic sperm injection, and any other non-  
15 experimental treatment, as determined by the Sec-  
16 retary in consultation with appropriate professional  
17 and patient organizations such as the American So-  
18 ciety for Reproductive Medicine, RESOLVE: The  
19 National Infertility Association, and the American  
20 College of Obstetricians and Gynecologists.

21       “(2) COVERAGE FOR IATROGENIC INFER-  
22 TILITY.—A group health plan and a health insur-  
23 ance issuer offering group or individual health insur-  
24 ance coverage shall provide coverage of fertility pres-  
25 ervation services for individuals who undergo medi-

1       cally necessary treatment that may cause iatrogenic  
2       infertility, as determined by the treating physician,  
3       including cryopreservation of gametes and other pro-  
4       cedures, as determined by the Secretary, consistent  
5       with established medical practices and professional  
6       guidelines published by professional medical organi-  
7       zations, including the American Society of Clinical  
8       Oncology and the American Society for Reproductive  
9       Medicine.

10      “(3) LIMITATION ON COVERAGE OF ASSISTED  
11      REPRODUCTIVE TECHNOLOGY.—A group health plan  
12      and a health insurance issuer offering group or indi-  
13      vidual health insurance coverage shall provide cov-  
14      erage for assisted reproductive technology as re-  
15      quired under paragraph (1) if—

16          “(A) the individual is unable to bring a  
17          pregnancy to a live birth through minimally  
18          invasive infertility treatments, as determined  
19          appropriate by the treating physician, with con-  
20          sideration given to participant’s or beneficiary’s  
21          specific diagnoses or condition for which cov-  
22          erage is available under the plan or coverage;  
23          and

24          “(B) the treatment is performed at a med-  
25          ical facility that—

1                 “(i) conforms to the standards of the  
2                 American Society for Reproductive Medi-  
3                 cine and the Society for Assisted Repro-  
4                 ductive Technology; and

5                 “(ii) is in compliance with any stand-  
6                 ards set by an appropriate Federal agency.

7         “(d) LIMITATION.—Cost-sharing, including deducti-  
8         bles and coinsurance, or other limitations for infertility  
9         and services to prevent iatrogenic infertility may not be  
10      imposed with respect to the services required to be covered  
11      under subsection (c) to the extent that such cost-sharing  
12      exceeds the cost-sharing applied to similar services under  
13      the group health plan or health insurance coverage or such  
14      other limitations are different from limitations imposed  
15      with respect to such similar services.

16         “(e) PROHIBITIONS.—A group health plan and a  
17      health insurance issuer offering group or individual health  
18      insurance coverage may not—

19                 “(1) provide incentives (monetary or otherwise)  
20                 to a participant or beneficiary to encourage such  
21                 participant or beneficiary not to be provided infer-  
22                 tility treatments or fertility preservation services to  
23                 which such participant or beneficiary is entitled  
24                 under this section or to providers to induce such

1 providers not to provide such treatments to qualified  
2 participants or beneficiaries;

3 “(2) prohibit a provider from discussing with a  
4 participant or beneficiary infertility treatments or  
5 fertility preservation technology or medical treat-  
6 ment options relating to this section; or

7 “(3) penalize or otherwise reduce or limit the  
8 reimbursement of a provider because such provider  
9 provided infertility treatments or fertility preserva-  
10 tion services to a qualified participant or beneficiary  
11 in accordance with this section.

12 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
13 tion shall be construed to require a participant or bene-  
14 ficiary to undergo infertility treatments or fertility preser-  
15 vation services.

16 “(g) NOTICE.—A group health plan and a health in-  
17 surance issuer offering group or individual health insur-  
18 ance coverage shall provide notice to each participant and  
19 beneficiary under such plan regarding the coverage re-  
20 quired by this section in accordance with regulations pro-  
21 mulgated by the Secretary. Such notice shall be in writing  
22 and prominently positioned in any literature or cor-  
23 respondence made available or distributed by the plan or  
24 issuer and shall be transmitted—

1           “(1) in the next mailing made by the plan or  
2        issuer to the participant or beneficiary;  
3           “(2) as part of any yearly informational packet  
4        sent to the participant or beneficiary; or  
5           “(3) not later than January 1, 2022,  
6        whichever is earlier.

7        “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—  
8        Nothing in this section shall be construed to prevent a  
9        group health plan or a health insurance issuer offering  
10      group or individual health insurance coverage from negoti-  
11      ating the level and type of reimbursement with a provider  
12      for care provided in accordance with this section.”.

13       (b) CONFORMING AMENDMENT.—Section 2724(c) of  
14      the Public Health Service Act (42 U.S.C. 300gg–23(c))  
15      is amended by striking “section 2704” and inserting “sec-  
16      tions 2704 and 2708”.

17       (c) EFFECTIVE DATES.—

18           (1) IN GENERAL.—The amendments made by  
19        subsections (a) and (b) shall apply for plan years be-  
20        ginning on or after the date that is 6 months after  
21        the date of enactment of this Act.

22           (2) COLLECTIVE BARGAINING EXCEPTION.—

23           (A) IN GENERAL.—In the case of a group  
24        health plan maintained pursuant to one or more  
25        collective bargaining agreements between em-

1 employee representatives and one or more employ-  
2 ers ratified before the date of enactment of this  
3 Act, the amendments made by subsection (a)  
4 shall not apply to plan years beginning before  
5 the later of—

(i) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act); or

(ii) the date occurring 6 months after the date of the enactment of this Act.

(B) CLARIFICATION.—For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

20 SEC. 4. FEDERAL EMPLOYEES HEALTH BENEFITS PRO-  
21 GRAM.

22 (a) IN GENERAL.—Section 8902 of title 5, United  
23 States Code, is amended by adding at the end the fol-  
24 lowing:

1       “(q)(1) In this subsection, the terms ‘infertility’ and  
2 ‘iatrogenic infertility’ have the meanings given those terms  
3 in section 2729A of the Public Health Service Act.

4       “(2) A contract under this chapter shall provide, in  
5 a manner consistent with section 2729A of the Public  
6 Health Service Act, coverage for—

7           “(A) the diagnosis and treatment of infertility,  
8 including nonexperimental assisted reproductive  
9 technology procedures, if that contract covers obstet-  
10 rical benefits; and

11          “(B) standard fertility preservation services  
12 when a medically necessary treatment may directly  
13 or indirectly cause iatrogenic infertility.

14          “(3) Coverage for the diagnosis or treatment of infer-  
15 tility and fertility preservation services under a health ben-  
16 efits plan described in section 8903 or 8903a may not be  
17 subject to any copayment or deductible greater than the  
18 copayment or deductible, respectively, applicable to obstet-  
19 rical benefits under the plan.

20          “(4) Subsection (m)(1) shall not, with respect to a  
21 contract under this chapter, prevent the inclusion of any  
22 terms that, under paragraph (2) of this subsection, are  
23 required by reason of section 2729A of the Public Health  
24 Service Act.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to—

3                   (1) any contract entered into or renewed for a  
4                   contract year beginning on or after the date that is  
5                   180 days after the date of enactment of this Act;  
6                   and

(2) any health benefits plan offered under a contract described in paragraph (1).

**9 SEC. 5. BENEFITS FOR TREATMENT OF INFERTILITY AND**  
**10 PREVENTION OF IATROGENIC INFERTILITY**  
**11 UNDER THE TRICARE PROGRAM.**

12       (a) IN GENERAL.—Chapter 55 of title 10, United  
13 States Code, is amended by adding at the end the fol-  
14 lowing new section:

## 15 “§ 1110c. Obstetrical and infertility benefits

16        "(a) IN GENERAL.—Any health care plan under this  
17 chapter shall provide, in a manner consistent with section  
18 2729A of the Public Health Service Act—

19               “(1) coverage for the diagnosis and treatment  
20       of infertility, including nonexperimental assisted re-  
21       productive technology procedures, if such plan covers  
22       obstetrical benefits; and

23               “(2) coverage for standard fertility preservation  
24       services when a medically necessary treatment may  
25       directly or indirectly cause iatrogenic infertility.

“(b) COPAYMENT.—The Secretary of Defense shall establish cost-sharing requirements for the coverage of diagnosis and treatment of infertility and fertility preservation services described in subsection (a) that are consistent with the cost-sharing requirements applicable to health plans and health insurance coverage under section 2729A(d) of the Public Health Service Act.

8        "(c) REGULATIONS.—The Secretary of Defense shall  
9 prescribe any regulations necessary to carry out this sec-  
10 tion.

“(d) DEFINITIONS.—In this section, the terms ‘assisted reproductive technology’, ‘iatrogenic infertility’, and ‘infertility’ have the meanings given those terms in section 2729A of the Public Health Service Act.”.

15 (b) CLERICAL AMENDMENT.—The table of sections  
16 at the beginning of chapter 55 of such title is amended  
17 by adding at the end the following new item:  
“1110c. Obstetrical and infertility benefits.”.

**18 SEC. 6. TREATMENT OF INFERTILITY AND PREVENTION OF**  
**19 IATROGENIC INFERTILITY FOR VETERANS**  
**20 AND SPOUSES OR PARTNERS OF VETERANS.**

21 (a) IN GENERAL.—Subchapter II of chapter 17 of  
22 title 38, United States Code, is amended by adding at the  
23 end the following new section:

3       “(a) IN GENERAL.—The Secretary shall furnish  
4 treatment for infertility and fertility preservation services,  
5 including through the use of assisted reproductive tech-  
6 nology, to a veteran or a spouse or partner of a veteran  
7 if the veteran, and the spouse or partner of the veteran,  
8 as applicable, apply jointly for such treatment through a  
9 process prescribed by the Secretary for purposes of this  
10 section.

“(b) DEFINITIONS.—In this section, the terms ‘assisted reproductive technology’ and ‘infertility’ have the meanings given those terms in section 2729A of the Public Health Service Act.”.

15       (b) CLERICAL AMENDMENT.—The table of sections  
16 at the beginning of subchapter II of chapter 17 of such  
17 title is amended by inserting after the item relating to sec-  
18 tion 1720J the following new item:

“1720K. Infertility treatment for veterans and spouses or partners of veterans.”

19       (c) REGULATIONS.—Not later than 18 months after  
20 the date of the enactment of this Act, the Secretary of  
21 Veterans Affairs shall prescribe regulations to carry out  
22 section 1720K of title 38, United States Code, as added  
23 by subsection (a).

1   **SEC. 7. REQUIREMENT FOR STATE MEDICAID PLANS TO**  
2                   **PROVIDE MEDICAL ASSISTANCE FOR TREAT-**  
3                   **MENT OF INFERTILITY AND PREVENTION OF**  
4                   **IATROGENIC INFERTILITY.**

5       (a) IN GENERAL.—Section 1905 of the Social Secu-  
6      rity Act (42 U.S.C. 1396d) is amended—

7                  (1) in subsection (a)(4)—

8                   (A) by striking “; and (D)” and inserting  
9                   “; (D);”;

10                  (B) by striking “; and (E)” and inserting  
11                  “; (E);”;

12                  (C) by striking “; and (F)” and inserting  
13                  “; (F);” and

14                  (D) by inserting before the semicolon at  
15                  the end the following: “; and (G) services and  
16                  supplies to treat infertility and prevent iatro-  
17                  genic infertility (as such terms are defined in  
18                  section 2729A(b) of the Public Health Service  
19                  Act) in accordance with subsection (jj)”;

20                  (2) by adding at the end the following new sub-  
21                  section:

22                  “(jj) REQUIREMENTS FOR COVERAGE OF INFER-  
23                  TILITY TREATMENT AND PREVENTION OF IATROGENIC  
24                  INFERTILITY.—For purposes of subsection (a)(4)(G), a  
25                  State shall ensure that the medical assistance provided  
26                  under the State plan (or waiver of such plan) for treat-

1 ment of infertility and fertility preservation services com-  
2 plies with the requirements and limitations of section  
3 2729A(c) of the Public Health Service Act in the same  
4 manner as such requirements and limitations apply to  
5 health insurance coverage offered by a group health plan  
6 or health insurance issuer.”.

7 (b) NO COST SHARING FOR INFERTILITY TREAT-  
8 MENT.—

9 (1) IN GENERAL.—Subsections (a)(2)(D) and  
10 (b)(2)(D) of section 1916 of the Social Security Act  
11 (42 U.S.C. 1396o(a)(2)(D)) are amended by insert-  
12 ing “, services and supplies to treat infertility and  
13 provide fertility preservation services described in  
14 section 1905(a)(4)(G)” after “1905(a)(4)(C)” each  
15 place it appears.

16 (2) APPLICATION TO ALTERNATIVE COST SHAR-  
17 ING.—Section 1916A(b)(3)(B)(vii) of the Social Se-  
18 curity Act (42 U.S.C. 1396o-1(b)(3)(B)(vii)) is  
19 amended by inserting “ and services and supplies to  
20 treat infertility and provide fertility preservation de-  
21 scribed in section 1905(a)(4)(G)” before the period.

22 (c) PRESUMPTIVE ELIGIBILITY FOR INFERTILITY  
23 TREATMENT.—Section 1920C of the Social Security Act  
24 (42 U.S.C. 1396r-1c) is amended—

1                         (1) in the section heading, by inserting “AND  
2                         INFERTILITY TREATMENT” after “FAMILY PLANNING  
3                         SERVICES”;

4                         (2) in subsection (a)—

5                             (A) by striking “State plan” and inserting  
6                         “A State plan”;

7                             (B) by striking “1905(a)(4)(C)” and in-  
8                         serting “section 1905(a)(4)(C), services and  
9                         supplies to treat infertility and prevent iatro-  
10                         genic infertility described in section  
11                         1905(a)(4)(G),”; and

12                             (C) by inserting “or in conjunction with an  
13                         infertility treatment service in an infertility  
14                         treatment setting” before the period.

15                         (d) INCLUSION IN BENCHMARK COVERAGE.—Section  
16                         1937(b) of the Social Security Act (42 U.S.C. 1396u–  
17                         7(b)) is amended by adding at the end the following new  
18                         paragraph:

19                             “(9) COVERAGE OF INFERTILITY TREATMENT  
20                         AND PREVENTION OF IATROGENIC INFERTILITY.—  
21                         Notwithstanding the previous provisions of this sec-  
22                         tion, a State may not provide for medical assistance  
23                         through enrollment of an individual with benchmark  
24                         coverage or benchmark-equivalent coverage under  
25                         this section unless such coverage includes medical

1 assistance for services and supplies to treat infertility  
2 and provide fertility preservation described in  
3 section 1905(a)(4)(G) in accordance with such section.”.

5 (e) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section  
7 shall take effect on October 1, 2021.

9 (2) DELAY PERMITTED IF STATE LEGISLATION  
10 REQUIRED.—In the case of a State plan approved  
11 under title XIX of the Social Security Act which the  
12 Secretary of Health and Human Services determines  
13 requires State legislation (other than legislation ap-  
14 propriating funds) in order for the plan to meet the  
15 additional requirement imposed by this section, the  
16 State plan shall not be regarded as failing to comply  
17 with the requirements of such title solely on the  
18 basis of the failure of the plan to meet such addi-  
19 tional requirement before the first day of the first  
20 calendar quarter beginning after the close of the  
21 first regular session of the State legislature that  
22 ends after the 1-year period beginning with the date  
23 of the enactment of this section. For purposes of the  
24 preceding sentence, in the case of a State that has  
25 a 2-year legislative session, each year of the session

1       is deemed to be a separate regular session of the  
2       State legislature.

○